Supreme Court, U. S.
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NO 76 523

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

CHURCH OF SCIENTOLOGY,

Petitioner

vs.

L GENE ALLARD,

Respondent

Respondent's Opposition and Response to Petition for a Writ of Certiorari to the Court of Appeal of the State of California Second Appellate District, Division Two

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I
STATEMENT OF THE CASE

L. Gene Allard (hereinafter "Respondent") filed and prosecuted a civil action against The Church of Scientology of California (hereinafter "Petitioner") based on the tort of malicious prosecution. Petitioner cross-complained (**California Code of Civil Procedure, §428.10**) for conversion.

A jury trial commenced on May 21, 1974 and concluded by verdict on May 31, 1974.

On the malicious prosecution action the jury found in favor of Respondent and awarded Respondent $50,000.00 in compensatory damages and assessed $250,000.00 in punitive damages against Petitioner. On the cross-complaint for conversion, the jury also found in favor of Respondent and against Petitioner.

Notice of Entry of Judgment was filed by the Clerk of the Superior Court of the State of California, County of Los Angeles, on June 6, 1974.

Petitioner moved for a new trial on all statutory grounds (**California Code of Civil Procedure,** §657) and urged the same points and arguments raised in its Brief on Appeal to the California Court of Appeal, Second Appellate District (filed June, 1975). After oral argument the trial court denied Petitioner's Motion for New Trial.

The Petitioner noticed its Appeal to the California Court of Appeal, Second District, on August 16, 1974. The Court of Appeal modified and affirmed the lower court's verdict in its decision rendered May 18, 1976. The full text of that decision is Appendix "A" attached to Petitioner's papers.

Both Respondent and Petitioner petitioned the Court of Appeal for Rehearing. The requests were denied. Petition was made for a hearing before the Supreme Court of the State of California. This too was denied (Appendix "B", p. 16a of Petitioner's papers).

Petitioner has now petitioned this Honorable Court for a Writ of Certiorari based on jurisdiction under 28 USC, §1257(3).

II
STATEMENT OF FACTS

Respondent respectfully points out to this Court that the Statement of the case contained in Petitioner's Petition for a Writ of Certiorari (pages 3-11) contains argument.

Deleted of that argument, Respondent generally accepts the statement as a Statement of Facts of this matter.

Where discrepancy appears or where the court's attention needs to be directed to additional facts Respondent makes appropriate references and citations thereto in his Argument. **infra.**

[For purposes of brevity and convenience. referenced to Petitioner's "Petition for a Writ of Certiorari" will be abbreviated as "Petitioner's Brief" Respondent will utilize the exhibits in Petitioner's brief for reference All references thereto shall be to the page numbers and exhibit numbers in the Brief]

III
ARGUMENT

A NO NEW ISSUE PRESENTED BY PETITIONER

1 ISSUE RESOLVED BY CALIFORNIA COURT OF APPEAL'S DECISION

A familiar principle established by this Court is that it will decline to review a state court judgment which rests on independent and adequate state grounds. even where the judgment also decides federal questions **Murdock v. City of Memphis,** 20 Wall. 590. 22 L Ed 429

The Court of Appeal of the State of California (Second Appellate District Division Two) squarely addressed itself to Petitioner's arguments when the appeal was before that court. including federal constitutional questions presented to this Court (Petitoner's Brief. pages 1a-15a)

That Court dealt with and dismissed Petitioner's claim that its First Amendment rights were violated almost immediately The Court properly dealt with the question of the "Fair Game Policy" as an evidentiary question (P 6a-7a)

Petitioner has failed to point out to this Honorable Court that the "Fair Game Policy" was not introduced into evidence without first giving Petitioner ". . .almost the entire trial within which to produce evidence that the Fair Game Policy had been repealed. [Petitioner] failed to do so, and the trial court thereafter permitted the admission of Exhibit 1 into evidence." (Footnote 4, p. 7a. Exhibit 1 is attached as Exhibit C to Petitioner's Brief, p. 17a.).

The trial court properly admitted evidence of the Fair Game Policy solely as to the issue of malice. Respondent submits that this conditional admission of the Fair Game Policy as to malice, was not asking a trier of fact to determine the validity of the doctrine. Credibility, motive and malice are important issues in malicious prosecution matters. Viewing the Fair Game Policy, along with the other evidence introduced during the trial allowed the jury to determine that Petitioner acted with malice and intended to cause injury and harm to Respondent by bringing the criminal action. (Petitioner's Brief, p. 6a-7a).

Assuming, **in arguendo** that the Fair Game Policy is a religious tenet honestly believed in by the Petitioner and its members, the First Amendment does not mandate exclusion of the Fair Game Policy from evidence. See, **U.S. v. Ballard,** 322 U.S. 78; **Kreshik v. St. Nicholas Cathedral,** 363 U.S. 190; **Presbytarian Church v. Hull Church,** 393 U.S. 440; **Watson v. Jones,** 80 U.S. 679; **Gonzales v. Archbishop,** 280 U.S. 1.

2 CALIFORNIA COURTS ARE NOT STRANGERS TO CLAIMS SIMILAR TO PETITIONER'S

The courts in the State of California have many times been faced with questions regarding the First Amendment to the United States Constitution

In **People v. Woody,** 61 Cal 2d 716 (1964). the California Supreme Court reversed a criminal verdict against certain Navajo Indians prosecuted under an ordinance prohibiting unauthorized possession of peyote, on the grounds the defendants used the drug in a bona fide pursuit of a religious faith and did not frustrate a compelling interest of the state.

The court held that a trier of fact need inquire only into the question of whether the defendants' belief in Peyotism is honest and good faith, not the truth or validity of the religious beliefs. The court rejected the argument that the approach of the court required a case by case inquiry into the bona fides of particular defendant's beliefs

The Court stated the California test to be that a "state must show that a compelling state interest outweighs the defendant's interest in religious freedom " (G1 Cal 2d at 718)

Respondent submits that the case at bar demonstrates the compelling state interest of California outweighs the Petitioner's belief in religious freedom The acts of Petitioner in dealing with the Fair Game Policy were not done to promote religious beliefs. but rather to hurt and destroy Respondent after he was declared an "enemy" and "fair game" (See also **In re Bartha,** (1976) 63 Cal App 3d 584, (No violation to First Amendment dealing with fortune telling inviolation to municipal ordinance), **People v. Mitchell,** (1966) 244 Cal App 2d 176, 52 Cal Rptr 884, **People v. Collins,** (1969) 273 Cal App 2d 486, 78 Cal Rptr 151.)

3. FIRST AMENDMENT PRIVILEGES NOT UNLIMITED

Petitioner cites authority that in essence recites that evidence of a party's religious beliefs cannot be admitted "as bearing upon their credibilities or propensities" **People v. Simon,** 80 Cal App 675, 252 P 758 (1927) (p 12.)

However, this rule is applicable only when the evidence sough to be admitted has **no logical** relation to the issues in the case. In **People v. Simon,** supra, the court held that the prosecution engaged in prejudicial misconduct when he referred in a derogatory fashion to defendant's religious affiliation of the Jewish faith as bearing upon his propensity to commit arson with wilful intent to defraud his insurers.

Where the evidence relates to an out of court statement of a church which contains a directive to its members to act in a particular fashion, and substantive evidence demonstrates the church members propensity to follow the Church's written directive, then the evidence of the "policy" is relevant to whether the members did act pursuant to that policy and whether they had a particular state of mind.

It is of little or no difference that Petitioner characterized the "Fair Game Policy" as a religious tenet Courts have been willing to go behind so-called religious beliefs and practices to determine if they are merely masks to legitimate otherwise illegal or tortious activity (See, **People v. Woody,** 61 Cal 2d 716 (1964). **Leary v. U.S.** 383 F 2d 851 (5th Cir . 1967), and **U.S. v. Kuch,** 288 F Supp. 439 (DC., Dist of Col.. 1968))

Again assuming, **in argumendo** that the "Fair Game Policy" (Exhibit "C". p. 17a of Petitioner's Brfief) is a religious tenet, honestly believed in by defendants, the First Amendment to the Constitution of the United States, by and through the Fourteenth Amendment to the Constitution, would not and does not mandate exclusion of the evidence

This court has reiterated in a long series of decisions that the First Amendment privileges are not unlimited Respondent requests that the court consider the facts of this case when viewing the quotation of **Davis v. Beason** (133 U S 333 (1890)). below

Petitioner herein was sued in a civil action for malicious prosecution The California Code of Civil Procedure. provides for such an action (C.C.P . §340(3)). [1] Elements of malicious prosecution include

(1) the malicious prosecution of a criminal proceeding terminated in favor of plaintiff (Respondent herein) (**Jaffe v. Stone,** (1941) 18 Cal 2d 146);

(2) defendant (Petitioner) acted without probable cause (**Pulvermacher v. Los Angels etc., Com.** (1943) 61 Cal App 2d 704 and

(3) the act was done with malice (**Richter v. Neilson,** (1936) 11 Cal App 2d 503)

This court is requested to consider that the bringing of a criminal action without just or good cause at a minimum is against public policy The **Code of Civil Procedure** allows recourse for this wrongful "act". **supra.**

The Fair Game Policy on its face (Exhibit "C". p 17a of Petitioner's Brief) specifies that one "[m]ay be tricked. sued or lied to or destroyed" The policy authorizes and directs actions by Scientologists which are against public policy and against the law

1 CCC §340 states as relevant Within one year

3 An action for libel slander assault battery false imprisonment seduction of a person below the age of legal consent or for injury to or for the death of one caused by the wrongful act or neglect of another or by a depositor against a bank for the payment of a forged or raised check or a check that bears a forged or unauthorized endorsement or against any person who boards or feeds an animal or fowl or who engages in the practice of veterinary medicine as defined in Business and Professions Code Section 4826 for such person's neglect resulting in injury or death to an animal or fowl in the course of boarding or feeding such animal or fowl or in the course of the practice of veterinary medicine on such animal or fowl

The **Davis** case discusses the laws of the United States and Idaho regarding polygamy This Court did not allow the circumvention of the law in the **Davis** case under the cloak and guise of religion Respondent submits that this court should not do so with the case at bar. **Davis v. Beason,** held (at 334-346):

> "The first amendment to the consitution, in declaring that congress shall make no law respecting the establishment of religion or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, **not injurious to the equal rights of others,** and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted, by the governments of Europe for many ages, to compel parties to conform, in the religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question. **It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society.** With man's relations to

his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, **provided always the laws of society designed to secure its peace and prosperity, and the morals of its people, are not interfered with.** However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as property the subjects of punitive legislation . . . . Probably never before in the history of this country has it been seriously contended that the whole punitive power of the government for acts, recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation, must be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance.

On this subject the observations of this court through the late Chief Justice Waite, in **Reynolds vs. U.S.**, are pertinent. 98 U.S. 145, 165, 166. In this case the defendant was indicted and convicted [for bigamy] . . . . . Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead

husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary, because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances " **It is assumed by counsel of the petitioner that, because no mode of worship can be established or religious tenets enforced, in this country, therefore any form of worship may be followed, and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practicing them. But nothing is further from the truth. While legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated. Crime is not the less odious because sanctioned by what any particular sect may designate as 'religion'."** (Emphasis supplied)

Petitioner herein believes that it should be allowed to apply its "Fair Game Policy" without restriction because it is a "tenet" of its church This "tenet" includes falsely bringing lawsuits and criminal prosecution without justification against former members of the church This concept parallels the arguments of the petitioner in **Daivs,** supra

Malicious prosecution, although not always punished by criminal sanctions, is nevertheless against public policy and is a wrong that may be punished civilly. Respondent submits that Petitioner's "tenet" cannot be allowed without restriction for it promotes the violation of the law.

More recently, this Court has stated:

"The Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for 'even where the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions.' **Braunfeld v. Brown,** 366 U.S. 599, 603, 81 S.Ct. 144, 1446, 6 L.Ed. 2d 563, The Conduct or actions so regulated have invariable posed some substantial threat to public safety, peace or order. See, e.g., **Reynolds v. U.S.** 98 U.S. 145, 25 L.Ed. 244; **Jacobson v. Massachusetts,** 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 2d 643; [Compulsory vaccination]; **Prince v. Mass.** 321 U.D. 158, 64 S.Ct. 438, 88 L.Ed 645; **Cleveland v. U.S.,** 329 U.S. 14, 67 S.Ct. 13, 91 L.Ed. 12." **Sherbert v. Verner,** (1963) 374 U.S. 398, 402.

(a). COURT MAY LOOK BEHIND TENETS

The Free Exercise Clause encompasses (1) freedom to believe and (2) freedom to act. The first is absolute, but the second is subject to reasonable regulation for the protection of society, subject to the protections of matters that are arbitrary and capricious. **Cantwell v. Connecticut** (1940) 310 U.S. 296. (See **Leary v. U.S.,** 383 F. 2d 851 (5th Cir. 1967), rev'd on other grounds 395 U.S. 6).

Authority cited by Petitioner illustrate only that civil courts' interference with the **internal** affairs of a religious organization is prohibited by the First Amendment Free Exercise Clause. **(Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,** 344 U.S 94 (1952))

For example, **Watson v. Jones,** 80 U.S. 679 (1972) dealth with the question of which of two competing church bodies was the "Walnut Street Presbyterian Church". The Court held that there was no violation of the establishment clause for religious organizations to use civil courts to decide disputes, particularly **property disputes,** as long as there is no involvement in determining ecclesiastical doctrines.

This Court held in **Boulden v. Alexander,** 82 U.S. 131 (1972) when faced with the question of which of two competing groups in the Baptist Church was the legal trustee and "true members" of the church that the Court could not decide the question of who ought to be members, nor the rights of the members, but it could inquire whether the excommunication by a particular group was the act of the church in the resolution of **property matters** only

Petitioner cites **Presbyterian Church v. Hull Church,** 393 U.S. 440 and other cases for the proposition that "the First and Fourteenth Amendments preclude civil judges and jurors from undertaking theological interpretation " (p. 17) The jury in the trial court was asked to determine whether general church actions were a "substantial abandonment" of Presbyterian doctrines and, if so, whether those doctrines were so central as to require the termination of a trust which was to remain in effect as long as the church followed the Presbyterian doctrines in existence at the creation of the trust

It is clear that Petitioner's "Fair Game Policy" needs no interpretations. It is not a church doctrine that need be deciphered. It is clear on its face and illegal as and when applied.

(b.) COMPELLING STATE INTEREST OUTWEIGHS TENET.

The Court faced this question in **Wisconsin v. Yoder,** 406 U.S. 205 (1972). Inquiry by the Court was made whether certain beliefs or practices by the Amish were "religious" and thus protected by the First Amendment, or whether the practices were merely a "way of life. . . based on purely secular considerations."

In deciding that Wisconsin's compulsory school-attendance statute as applied to the Amish violated the First Amendment rights of the children's parents, this Court could not find a compelling state interest present to override the religious practices of the Amish.

As the Court examines the facts at bar, it is instantly obvious that there is a compelling state interest involved. The State of California has seen fit to express as against public policy and the civil law, the allowance of unfounded and malicious prosecutions. To allow this practice, which is dictated by the Fair Game Policy, is to promote conjested courts and lawsuits and prosecution for illegal purposes. Respondent submits that the proper administration of the courts in the State of California, public policy and the interest of justice, are compelling state interests to defeat a claim of violation of the exercise clause and establishment clause of the First Amendment, as professed by Petitioner.

IV

CONCLUSION

Respondent respectfully submits that all issues raised by Petitioner were dealt with properly by the Court of Appeal in the State of California. There are no issues before this Honorable Court that have not been dealt with before, nor is there an issue that there has been a violation of the First and Fourteenth Amendments. Respondent submits that Petitioner's request for a Writ of Certiorari be denied.

Respectfully submitted,

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L GENE ALLARD

PROOF OF SERVICE

STATE OF CALIFORNIA)
ss
County of Riverside)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1509 N. Main, Santa Ana, California 92701.

On January 11, 1977 I served the within RESPONDENT'S OPPOSITION AND RESPONSE TO PETITION FOR A WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in three sealed envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

Court of Appel
Second Appellate District
3580 Wilshire, Room 301
Los Angeles, California 90010

Clerk of the Superior Court
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Tobias C. Tolzmann
Attorney at Law
5564 Kawaikui
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I CERTIFY under penalty of perjury that the foregoing is true and correct.

EXECUTED on January 11, 1977, at Santa Ana, California.

JACK GALLAGHER